IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2340 OF 2006.
IN
SUIT LDG.NO. 1809 OF 2006.

Sasmita Investments Ltd.,
a Company incorporated and
registered under the Companies
Act, 1956 having its Registered
office at 11, K.K.Marg, Mahalaxmi,
Mumbai 400 034. ... Plaintiff.

Versus.

1. Appropriate Authority,
   Constituted under Chapter XXC
   of the Income Tax Act, 1961,
   having their office at 3rd
   floor, Mittal Court, "A" Wing,
   Nariman Point, Mumbai 40 021.

2. The Union of India,
   through the Secretary, Ministry
   of Finance, New Delhi. ... Defendants.

Shri Mukul Rohatgi, Senior Counsel with Janak Dwarkadas, Senior Counsel, and Shri Zal Andhyasrujina, Shri Raj Panchmania, Shri Aloukin Pai i/by M/s.Udwadia and Udeshi for the Plaintiff in support of Notice of Motion.

Shri M.I.Sethna, Senior Counsel with Shri Rajguru, Shri A.M.Sethna, i/by Shri R.Ashokan for the Defendant No.1.

Ms.J.Pandhi for Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : 9th & 10th October, 2007.

ORAL JUDGMENT.:

1. I have heard the learned Counsel appearing for the parties in this Notice of Motion as well as in Contempt Petition No.98 of 2006. With a view to appreciate the submissions made by the learned Counsel

appearing for the parties, it will be necessary to refer to the facts of the case in brief.

2. It appears that one Jaysing Gopaldas Mulani and others (hereinafter referred to as "Mulanis") were the owners of the property in dispute, namely a plot of land bearing City Survey No.152 admeasuring 1636.30 sq.meters together with structures thereon situated at Walkeshwar Road, Mumbai. On 16th May 1981 the said Mulanis entered into an agreement for sale in respect of the said property in favour of one Om Prakash Navani on the terms and conditions contained in the said agreement. On July 13, 1991 Mulanis and the said Om Prakash Navani entered into an agreement for sale with the Seawell Interdrill Services Pvt.Ltd. (hereinafter referred to as "Seawell") for sale of the said property and the rights of said Om Prakash Navani. Mulanis submitted a statement in form 37-I under section 269UC of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") to the 1st Defendant, which is an Appropriate Authority under the said Act, giving intimation of the intention to sell the said property in terms of the agreement dated 13th July 1991.

3. By an order dated 29th September 2004, this Court sanctioned a scheme of amalgamation of the Seawell Interdrill Services Pvt.Ltd. with one Trikaya

Investment Ltd. (hereinafter referred to as "Trikaya").

4. On 27th September 1991 an order was passed under sub-section (1) of section 269UD of the said Act by the 1st Defendant of compulsory purchase of the said property on the ground that the consideration mentioned in the agreement dated 13th July 1991 was understated. A writ petition came to be filed in this Court by Mulanis for challenging the said order. A separate writ petition was also filed by Seawell for challenging the said order. By order dated 12th April 1993, this Court set aside the order dated 27th September 1991 and remanded the matter back to the 1st Defendant to dispose of the Application made by Mulanis in form 37(I). On 29th June 1993 again an order was passed by the 1st Defendant for compulsory purchase on the ground that the consideration mentioned in the agreement dated 13th July 1991 was understated. The said order of compulsory purchase was challenged by Mulanis by filing a writ petition. The Seawell also filed a separate petition being Writ Petition No.1782 of 2002 for challenging the said order.

5. The said petition being Writ Petition No.1782 of 1993 was disposed of by this Court by order dated 11th June 2002 whereby this Court remanded the matter to the Appropriate Authority for a fresh hearing and decision.

To enable the learned Appropriate Authority to decide the matter afresh, the order of compulsory purchase passed on 29th June 1993 was set aside. The order provides that in case the Appropriate Authority again decides to acquire the property, the Petitioners would be free to approach this Court.

6. On the basis of the said order, a fresh order was passed of compulsory purchase on 12th September 2002. On 24th September 2002 the 1st Defendant communicated to the Mulanis as well as the said Om Prakash Navani the fact that the 1st Defendant was willing to pay the apparent consideration after the possession of the said property free from encumbrances along with documents and relevant papers was handed over to the 1st Defendant and all the liabilities of the vendors as per the agreement with the transferee are discharged. By letter dated 4th October 2002 Mulanis called upon the 1st Defendant to deposit the sale consideration with the Advocates of the co-owners. The 1st Defendant was called upon not to insist upon the co-owners to hand over the documents and papers relating to the said property to the 1st Defendant.

7. The case of the Plaintiff is that in accordance with the provisions of the said Act, the amount of apparent consideration ought to have been tendered on or

before 31st October 2002. It appears from the further correspondence between Trikaya and the 1st Defendant that it was contended that on account of the failure of the 1st Defendant to pay the requisite amount, the property stood re-vested in Mulanis. A reference has been made to the communications dated 20th May 2005 and 10th June 2005.

8. It is the case of the Plaintiff that the Mulanis and the said Om Prakash Navani terminated the agreement dated 13th July 1981 in favour of Trikaya. The Plaintiff purchased the said property by a deed of conveyance dated 16th May 2006 from Mulanis and the said Om Prakash Navani for a total consideration of Rs.18,25,00,000/-. It is alleged in the plaint that on 13th June 2006 the Plaintiff was shocked to find that the lock put on the outhouse situated on the said property was broken and another lock was put thereon. According to the Plaintiff, they were informed by the security personnel guarding the property that the keys of the new lock were with the Defendants.

9. The contention of the Plaintiff is that the Defendants were admittedly not in possession of the suit property. The suit is filed, interalia, for declaration that the said order dated 12th September 2002 of compulsory purchase of the property stands abrogated on

and from 31st October 2002. The second declaration sought is that on 31st October 2002 all right, title and interest in the said property stood re-vested in the Mulanis and Om Prakash Navani. The third declaration which is prayed for is that on and from 16th May 2006 the Plaintiff is the absolute owner in possession of the suit property and has the absolute right, title and interest in the said property. A decree is also sought for perpetual injunction restraining the Defendants, their agents and servants from interfering with the Plaintiff's possession and/or its right to develop the property. A prayer for mandatory injunction is also made directing the Defendants to forthwith remove their board and security personnel from the suit property.

10. In the present notice of motion, the prayer (a) is for the same declaration which is sought in the plaint. Prayers (b) and (c) are for perpetual and mandatory injunctions as sought in the plaint pending the hearing and final disposal of the suit. Prayer (d) is for injunction restraining the Defendants in any manner interfering with the Plaintiff's possession and/or its right to develop, alienate, sell, transfer, and dispose of the suit property. Prayer (e) is for temporary injunction directing the Defendants to remove their board and security personnel from the suit property.

11. The learned Senior Counsel appearing for the Plaintiff has made elaborate submissions. The learned Senior Counsel has invited my attention to the provisions of the said Act and particularly Chapter XX-C thereof which deals with the purchase by Central Government of immovable properties in certain cases of transfer. He pointed out that the second order of compulsory purchase passed on 29th June 1993 was set aside by this Court by order dated 11th June 2002 and the third order of compulsory purchase was passed on 12th September 2002. He invited my attention to the relevant provisions of Chapter XX-C and in particular sub-section (1) of section 269UF. He submitted that the amount of consideration payable as per section 269UF of the Act ought to have been tendered to the on or before 31st October 2002. He pointed out that the 1st Defendant did not tender the amount on or before 31st October 2002. He invited my attention to the communications issued by the Defendants in which it is stated that the amount payable under section 269UF has been already deposited on the basis of the second order of compulsory purchase passed on 29th June 1993. The learned Senior Counsel appearing for the Plaintiff submitted that the deposit of the amount by the 1st Defendant on the basis of the earlier order dated 29th June 1993 in P.D.Account was not at all a valid tender

as per the provisions of sub-section (1) of section 269UG. He submitted that the 1st Defendant offered to pay the said amount subject to conditions such as handing over possession and delivery of the documents of title etc. He submitted that the tender of the amount contemplated by sub-section (1) of section 269UG has no connection with the possession of the property and the period described by sub-section (1) of section 269UG starts running from the date on which the property vested in the Central Government in terms of sub-section (1) of section 269UE. He pointed out that the vesting is on the date of passing of the order of compulsory purchase. He submitted that the requirement incorporated in sub-section (1) of section 269UG is a mandatory requirement and the consequence of non-compliance with the mandatory requirement is as provided in section 269UH. He pointed out that in the present case neither sub-section (2) nor sub-section (3) of section 269UG is applicable and therefore, tender of the amount ought to have been in accordance with sub-section (1) of section 269UG. He pointed out that the tender is not made on or before 31st October 2002. The order of compulsory purchase made by the Defendants under sub-section (1) of section 269UD stands abrogated and the immoveable property subject matter of sale stands re-vested in the transferor. He, therefore, submitted that the date on which the Plaintiff purchased

the suit property by a registered conveyance, the vendors of the Plaintiff were the owners as by virtue of sub-section (1) of section 269UH, the suit property would revest in the vendors.

12. The learned Senior Counsel submitted that though the 1st Defendant claims to have taken forcible possession of the property on 22nd July 1993, the correspondence on record shows that admittedly the Defendants were not in possession. He invited my attention to the copies of the letters on record and in particular letter dated 19th December 2005 issued by the 1st Defendant to Trikaya which proves that the Defendants were not in possession. He submitted that the only the security guards employed by the Defendants are on the suit property and there is a name board on the suit property, however, the possession is with the Plaintiff.

13. He submitted that in any event in view of divesting which has taken place by operation of law, now the Defendants have no right to obstruct the Plaintiff being the real owner of the property from enjoying the property and from developing the property. He, therefore, submitted that the Plaintiff is entitled to the interim relief as prayed. He placed reliance on several decisions which are referred to in the later

part of this order.

14. The learned Senior Council appearing for the first Defendants submitted that under section 269UN of the said Act, the Civil suit filed by the Plaintiff was not maintainable. He submitted that neither the transferee nor the transferor under the Agreement/transaction dated 13th July 1991 have challenged the order dated 12th September 2002 and therefore, the Plaintiff has no locus to institute the present suit. He submitted that the alleged predecessors-in-title of the Plaintiff were not in possession of the property as forcible possession of the property was taken over by the authorities on 22nd July 1993 on the basis of the second order of compulsory purchase passed on 29th June 1993. He submitted that the Plaintiff is disentitled to any interim relief on the ground that the suit is not maintainable and also on the ground that the Plaintiff has no locus. He pointed out that the predecessors of the Plaintiff have not been impleaded as parties to the suit. Moreover he submitted that the Defendants are in possession of the suit property.

15. He submitted that in view of sub-section (2) of section 269UE of the said Act, it is the obligation of the transferor or any other person who may be in

possession of the immoveable property in respect of which the order of compulsory purchase is passed to surrender or deliver possession of the property in question to the Appropriate Authority. He submitted that as possession was not handed over, on 22nd July 1993 forcible possession of the suit property was taken over. He submitted that though repeatedly the said Mulanis and Om Prakash Navani were called upon to submit title deeds of the said property, the same were not submitted. He submitted that admittedly the consideration amount was already deposited in the P.D.Account of the Defendants on 29th July 1993. He submitted that immediately after order 12th September 2002 was passed and in any event before 31st October 2002, the 1st Defendant offered the amount lying in the P.D.Account subject to the condition of the Trikaya/Mulanis submitting the documents of title as per their obligation under the statute. He submitted that the offer made by the 1st Defendant to pay the amount which was already deposited in the P.D.Account itself is a valid tender under sub-section (1) of section 269UF of the said Act. He submitted that from the scheme of the said Act it is very clear that the deposit of the amount in P.D.Account is itself a valid tender as contemplated by sub-section (1) of section 269UG. He submitted that in view of the fact that the entire amount of apparent consideration was deposited way back on 23rd July 1993,

there is compliance with the requirement of tender. He submitted that at no point of time, any dispute was raised by the parties regarding tender of the apparent consideration by the Defendants. It is submitted that as the Plaintiff's predecessor-in-title has not challenged the order dated 12th September 2002, now the Plaintiff in the year 2006 cannot challenge the said order. He submitted that even letter dated 19th December 2005 sent by the Appropriate Authority does not contain any admission that the Defendants are not in possession. He invited my attention to the letter dated 11th October 2002 sent by Mulanis to the Appropriate Authority in which it was categorically admitted that the 1st Defendant was in possession of the suit property. The learned Counsel for the Defendants also placed reliance on certain decisions, a reference to which will be made in later part of the said judgment.

16. The learned Senior Counsel appearing for the Plaintiff by way of rejoinder submitted that there was a divesting of the property as a consequence of the failure of the 1st Defendant to tender the amount on or before 31st October 2003. He submitted that there is an automatic divesting by operation of law, even assuming that the possession of the property and possession of title deeds were not handed over by the predecessor of the Plaintiff, the divesting has taken effect. He

submitted that in view of the divesting by operation of law, now the Central Government or any of its wings cannot prevent the real owner of the property from developing the suit property. He submitted that as the Defendants have no right, title or interest in respect of the suit property, the Plaintiff is entitled to the relief of injunction as prayed.

17. I have carefully considered the submissions made by the learned Counsel appearing for the parties. The order dated 12th September 2002 has been admittedly passed under sub-section (1) of section 269UD of the said Act. Sub-section (1) of section 269UE provides that when an order under sub-section (1) of section 269UD is made by the Appropriate Authority in respect of an immoveable property referred to in sub-clause (i) of clause (d) of section 269UA, the said property shall on the date of such order vests in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of section 269UC. In the present case the agreement for transfer is dated 13th July 1991 executed by the Mulanis and Om Prakash Navani in favour of the predecessor of Trikaya. Thus the vesting according to sub-section (1) of section 269UE in the Central Government is on 12th September 2002. Sub-section (2) of section 269 UE enjoins the transferor or any other person in possession of the immoveable

property subject matter of purchase to surrender or deliver possession of the property to the appropriate Authority. In case of failure or refusal to surrender or deliver possession, the Appropriate Authority under sub-section (3) of section 269UE is empowered to take possession of the property by use of such force as may be necessary. For that purpose, the Appropriate Authority can requisition the services of any Police Officer. Sub-section (1) of section 269UF provides that where an order for purchase of any immoveable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of apparent consideration. Sub-section (1) of section 269UG provides that the amount of consideration payable in accordance with provisions of section 269UF shall be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immoveable property concerned becomes vested in the Central Government under sub-section (1) or as the case may be, sub-section (6) of section 269UE. In the present case sub-section (6) of section 269UE has no application. Under section 269UE in case there is a dispute as to the apportionment of the apparent consideration payable by the Central Government, a provision is made for deposit of the said amount with the Appropriate Authority. It is also

provided that if the person entitled to the amount of consideration does not consent to receive or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with Appropriate Authority the amount of consideration required to be tendered under sub-section (1) of section 269UF within the period specified therein. Sub-section (4) of section 269UG provides that the apparent consideration so deposited with the Appropriate Authority can be invested in Government securities or other securities. Under sub-section (1) of section 269UH it is provided that if the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or (3) of the said section 269UG whole or part of the consideration amount within the period specified, the order to purchase the immoveable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immoveable property shall stand revested in the transferor after expiry of the aforesaid period.

18. The Plaintiff has placed reliance on a decision of the Apex Court in the case of Union of India and another v/s. Dr.A.K.Garg and others ([2002] 10 S.C.C. 392). In the case before the Apex Court the amount of apparent consideration was deposited with the Appropriate Authority, but there was no material on

record to show that the same was tendered or offered to the parties concerned. The Apex Court held that as there was no material forthcoming to show that the offer was made within time stipulated by law, the purchase order stood abrogated.

19. Reliance has been placed on the decision of the Apex Court in the case of Prima Realty v/s.Union of India and others ([1996] 11 SCC 65). In the case before the Apex Court, the payment of apparent consideration was required to be made on or before 31st May 1995. On 31st May 1995 the Central Government issued 9 cheques drawn on the same day. The cheques were drawn in an incorrect name. The said cheque was delivered to the Appellant on 1st June 1995. On 21st June 1995, the said cheque was returned to the Appropriate Authority by the Appellant contending that the purchase order stood abrogated on account of non-compliance of the tendering the amount. On 22nd June 1995 the Central Government forwarded a corrected cheque in the sum of Rs.60 lakhs in the correct name. In a writ petition filed by the Appellant before the High Court it was contended that the aforesaid payment sought to be made on 22nd June 1995 was of no consequence. The Apex Court held that the tender of the amount of apparent consideration was short to the extent of Rs.60 lakhs for which the cheque was issued in a wrong name. The Apex Court held that

the order of compulsory sale stood abrogated.

20. Reliance has been placed by the Plaintiffs on the decision of the Division Bench of this Court in the case of Parasrampuria Estate Developers Pvt.Ltd. v/s. Appropriate Authority and others ([2005] 199 [CTR BOM] 143). Reliance has been placed on paragraphs 9 and 10 of the said decision which hold that the requirement of sub-section (1) of section 269UG was mandatory. It was held that on account of non-compliance with the mandatory requirement, the order of purchase stood abrogated and the properties stood revested in the Petitioner before this Court. Thus the position regarding the effect of non-compliance with the requirement of tender under section 269UG appears to be well settled. The consequence of non-compliance is the revesting under sub-section (1) of section 269UH.

21. In the present case the submission of the Defendants is that the amount of apparent consideration has already been deposited on the basis of the earlier order of purchase on 29th June 1993. As pointed out earlier all the three orders of compulsory purchase are on the basis of the same agreement for sale dated 13th July 1991. In fact the order dated 29th June 1993 was passed on the basis of the order of remand by setting aside the first order passed on 27th September 1991.

The last order dated 12th September 2002 has been passed on the basis of the order of remand dated 11th June 2002. While setting aside the second order by passing order in terms of the minutes of order, in clause 4 of the minutes of the order, this Court has provided that in the event order under section 269UE(1) dated 29th June 1993 is set aside after hearing the concerned parties and no objection certificate is issued, the Petitioner therein will not have any claim whatsoever against the Respondents in the said petition. On the basis of the said order, the 3rd order was passed on 12th September 2002.

22. It will be necessary to refer to the communication dated 24th September 2002 issued by the 1st Defendant to Mulanis and the said Om Prakash Nawani. In the said communication issued by the 1st Defendant it is stated that forcible possession of the property was taken on 22nd July 1993. A reference has been made in the said letter to various clauses in the agreement dated 13th July 1991 including clause 5 thereof. It is pointed out that as per the said clause No.5 Mulanis and the said Om Prakash were under an obligation to evict the tenants in possession of part of the suit property. Mulanis and Om Prakash Navani were called upon to deliver possession of that part of the property within a period of 15 days from the date of service of the order

dated 12th September 2002. They were also called upon to furnish certificate from assessing I.T.O. regarding position of arrears of taxes viz. Income tax, Wealth tax and Gift tax. They were also called upon to disclose the outstanding dues payable in respect of the said property. Lastly they were also called upon to hand over possession of the property free of encumbrances along with documents and relevant papers in original. The 1st Defendant called upon them to intimate the decision regarding apportionment of the amount from amongst persons interested. The said letter was replied to by one Shri Dilip P.Mulani on behalf of Mulanies on 4th October 2002. In the said letter it was asserted that the 1st Defendant was in possession of the property. It was contended that the Appropriate Authority cannot force the co-owners to remove the encumbrances mentioned in clause 5 of the agreement dated 13th July 1991 without carrying out obligation in terms of clause 6 of the agreement by depositing the sum of Rs.7,74,99,000/- with M/s.Kanga & Co. who were representing the Co-owners. It must be noted here that no grievance has been made in the said letter by the owners regarding the failure of the Defendants to tender the apparent consideration to them. It must be noted here that all further correspondence which is annexed to the plaint has been made either by Seawell Interdrill Services Pvt.Ltd. or by Trikaya. At least from the

averments made in the plaint and from the documents annexed to the plaint, it appears that neither Mulanis nor the said Om Prakash Navani appear to have made grievance regarding the alleged failure of the 1st Defendant to tender the apparent consideration. The correspondence made by the Purchaser under the agreement dated 13th July 1991 from December 2002 onwards is for contending that there is a re-vesting of the property in accordance with sub-section (1) of section 269UH. In the affidavit-in-reply filed on behalf of the Defendants by one Shri S.B.Choundankar, Income Tax Officer (Judicial) of the 1st Defendant, it is stated that on the basis of the purchase order dated 29th June 1993 the Appropriate Authority deposited the full apparent consideration in the P.D.Account of the said Authority and a copy of the challan dated 30th July 1993 evidencing deposit of the sum of Rs.8,78,20,222/- has been annexed to the affidavit. The contention of the Defendant is that even from letter dated 24th September 2002 it is clear that the Defendants offered to pay the consideration provided the compliance was made by the said owners and Navani by handing over the documents and by handing over possession of the property free from encumbrances of the tenants. The contention of the Defendants is that the Vendors were under an obligation to perform their obligations under the agreement dated 13th July 1991.

23. The submission of the Plaintiffs is that the amount of apparent consideration has to be tendered within the time provided by law under sub-section (1) of section 269UG. The time starts running from the date of vesting i.e. the date of passing the order under sub-section (1) of section 269UD. The contention of the Defendants is that the apparent consideration was deposited way back in the year 1993 in the P.D.Account even to the knowledge of Mulanis and the said Omprakash Navani and the said deposit is a valid tender. The contention of the Plaintiff is that the tender or payment of apparent consideration cannot be postponed on the ground that the documents of title are not handed over by the Vendors or that encumbrances on the property are not cleared. Reliance has been placed by the Plaintiff on the decision of Calcutta High Court in the case of Union of India v/s. Madhusudan Das and others, dated 29th January 2002 in support of the contention that the deposit of the amount in P.D.Account can be treated as a valid tender only in case the persons entitled to the amount of consideration do not consent to receive or if there is any dispute as to the title to receive the amount of consideration. The Calcutta High Court in the said decision held thus:

. "Section 269UG contemplates the contingencies when the amount of consideration could be deposited by the Central Government with the appropriate authority:

. (a) In case of any dispute as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto.

. (b) In case the persons entitled to the amount of consideration do not consent to receive it or if there is any dispute as to the title to receive the amount of consideration.

. Only in cases of the aforesaid two situations, the Central Government is entitled to deposit the amount of apparent consideration with the appropriate authority. When there was no such contingencies existing, the Central Government could not have deposited the amount with the appropriate authority and any deposit in the absence of such contingencies is invalid and the subject property automatically stood revested in the original owners. In the case in hand the aforesaid two situations do not exist at all. Therefore, the deposit by the Central Government was rightly held to be invalid."

The contention of the Plaintiff is that the present case is not covered by both the contingencies referred to by the Calcutta High Court and therefore, the only mode of tender was actual tender to the Mulanis and Omprakash Navani.

24. Considering the contentions which are raised by the Plaintiffs and considering the relevant provisions of Chapter XX-C of the Act, it is obvious that there are several triable issues involved in this suit. However, it must be stated that going by the averments made in the plaint and the documents annexed to the plaint, it appears that neither Mulanis nor Omparakash Navani made any grievance regarding the failure of the Defendants to actually tender the apparent consideration. There are no affidavits-in-support filed by Mulanis or Omprakash Navani on record of the suit. Even in the decision of the Calcutta High Court, which is relied upon by the Plaintiff, it is observed that the apparent consideration could be deposited by the Central Government with the Appropriate Authority in case the persons entitled to the amount of consideration do not consent to receive. It must be borne in mind that neither the said Mulanis nor the said Omprakash Navani have challenged the order dated 12th September 2002 or have filed proceedings for contending that there is

revesting as a consequence of failure of the Defendants to tender the apparent consideration on or before 31st October 2002. The present Plaintiff has came into picture much later on the basis of conveyance dated 16th May 2006.

25. There is one more aspect of the case which needs consideration. In the plaint a case is made out by the Plaintiff that possession of the suit property is with the Plaintiff. In clause (w) of paragraph 3 of the plaint, it is asserted that the Plaintiff has remained and continues to remain in possession of the suit property. It is stated that upon execution of the deed of conveyance the Plaintiff and his security agents entered into the property unhindered and without any obstruction. Clause (x) of the same paragraph reads thus:

> (x). The Plaintiff says that upon the passing of the first Order of compulsory purchase dated 27th September, 1991, the Defendants Nos.1 and 2 had displayed a notice board on the said property stating that the said property vested in Defendant No.2 under Section 269UE of the said Act and posted security personnel to guard the said property. Even after the said Order of compulsory

purchase was set aside by this Hon'ble Court vide its order dated 12th April 1993, Defendant Nos.1 and 2 did not remove the Board and the security personnel which they are obligated under law and illegally allowed the board to remain and the security personnel continue to guard on the said property. Thereafter as the said Property was again by the said compulsory purchased order dated 29th June 1993 directed to be compulsorily purchased. This order was also set aside by the order of this Hon'ble Court dated 11th June 2002 stated above. Even after this Order was set aside the Defendants Nos.1 and 2 did not remove the Board and the security personnel which they are obligated under law and illegally allowed, the board to remain and the security personnel continue to guard on the said property. The Plaintiff says that despite the fact that the order of compulsory purchase dated 12th September 2002 stood abrogated on and from 31st October 2002 (consequent to section 269UH of the said Act), and the land together with all the rights thereunder including the rights to FSI have consequently re-vested in the Mulanis and Om Prakash Navani respectively, the Defendants

> have failed to remove their said boards and security personnel."

Thus the Plaintiff has admitted that the Defendants have posted security personnel to guard the said property and there is a notice board displayed.

26. In response to the communication dated 24th September 2007 issued by the 1st Defendant, one Dilip Mulani on behalf of Jaisinh Gopaldas Mulani and others replied by letter dated 4th October 2002. In clause (a) of the said letter it is stated thus:

> "Since then the Appropriate Authority is in possession of the said property till today. The said order dated 12th September, 2002 passed by the Appropriate Authority is illegal and bad in law, and therefore, the question of handing over to the Appropriate Authority, the documents and papers relating to the said property by the Co-owners do not arise."

Thus a categorical stand has been taken by the owners that the 1st Defendant was in possession of the suit property atleast till 4th October 2002. There is nothing on record to show that the said Om Prakash Navani at any time disputed that forcible possession of

the suit property was taken over by the 1st Defendant oon 22nd July 1993. It must be noted here that the letter dated 24th September 2002 records that though forcible possession of the property was taken on 22nd July 1993, there were tenants in occupation of part of the property. In fact the names of two tenants have been incorporated in the agreement dated 13th July 1991. Now a reliance is placed on letter dated 10th June 2005 and in particular clause (4) thereof, which is sent by the 1st Defendant. Clause (4) reads thus:

> "4. Under the circumstances I am now directed to intimate you that this office is willing to pay the apparent consideration in respect of the subject property as soon as the clean possession of the property is handed over to the Appropriate Authority, free from all encumbrances along with all original title documents and other relevant papers and all the liabilities of the vendors as per their agreement with the transferee are discharged."

The Plaintiff has also relied upon the letter dated 19th December 2005 sent by the 1st Defendant and in particular clause 4 of the said letter. The said clause 4 reads thus:

> "4. Under the circumstances, I am directed to reiterate that this office is ready and willing to pay the apparent consideration in respect of the subject property as soon as the clean possession of the property is handed over to the Appropriate Authority, free from all encumbrances along with all original title documents and other relevant papers and all the liabilities of the vendors as per their agreement with the transferee are discharged."

Clause 4 of both the aforesaid letters refers to the handing over clean possession of the suit property. Clause 2 of both the letters refer to the handing over of peaceful possession of the property along with title documents and papers pertianing to the aforesaid property. These communications will have to be read in the light of what is stated in communications dated 24th September 2002 and 4th October 2002. The communication dated 24th September 2002 records that though possession is taken over by the 1st Defendant, there are still some tenants in occupation of the property and it is stated that it was the obligation of the owners under the agreement dated 13th July 1991 to evict the said tenants. Therefore, demand in letters dated 10th June 2005 and 19th December 2005 of handing over peaceful possession or clean possession is obviously of delivery

of possession of the portion of the said property in possession of the tenants and to delivery title documents. Prima-facie there is no such admission by the 1st Defendant in the said letters. There is a categorical assertion in letter dated 4th October 2002 sent on behalf of vendors (Mulanis) of the Plaintiff that the 1st Defendant was in possession of the property atleast on 4th October 2002. It is not the case of the Plaintiff that after 4th October 2002 possession of the property was handed over by the Defendants either to Mulanis or the said Omprakash Navani or that after 4th October 2002 the property was repossessed by them. The entire plaint proceeds on the footing that the Plaintiff is in possession. Prima-facie, it is very difficult to accept the contention that the Plaintiff was put in possession of the said property by their vendors as their vendors were not in possession of the said property as is clear from the correspondence made by the Vendors themselves. Prima-facie, the 1st Defendant appears to be in possession of the suit property.

27. Another issue has been raised by the Defendants regarding the maintainability of the suit in view of section 269UN of the said Act, which reads thus:

> "269UN. Save as otherwise provided in this Chapter, any order made under sub-section (1)

> of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force."

The issue regarding locus of the Plaintiff to file the suit has been raised in the context of the fact that the predecessor of the Plaintiff neither challenged the order dated 12th September 2002 nor came out with the case of re-vesting. The case of re-vesting was made out by the purchasers of the original vendors under the agreement dated 13th July 1991. However, the said agreement has been admittedly cancelled. The issue regarding the maintainability of the suit and the locus of the Plaintiff will have to be decided at the time of final hearing of the suit.

28. Though there are triable issues involved in the suit, the question of granting interim protection will have to be considered in the light of the aforesaid prima-facie finding regarding possession and failure of the Vendors of the Plaintiff to raise the contention regarding non-tender of the apparent consideration. Prayer (a) of the Notice of Motion cannot be granted as the Plaintiff has prayed for declaration. Prayers for

interim reliefs are prayer clauses (d) and (e). Prayer (d) proceeds on the footing that the Plaintiff is in possession. As held earlier, prima-facie, it is not possible to accept that the Plaintiff was in possession of the property on the date of institution of the suit. The Plaintiff has not chosen to pray for a decree for possession. Even assuming that bar of section 269UN is not attracted, the suit may not be maintainable without there being a prayer for possession.

29. It is obvious that considering the nature of controversy involved, such an interim relief cannot be granted which will have the effect of permitting the Plaintiff to develop the property during the pendency of the suit. Prayer (e) is for issuing a mandatory injunction directing the Defendants to forthwith remove their board and security personnel. However, considering the prima-facie finding regarding possession, the said prayer cannot be granted at this stage. The security personnel employed by the Defendants have been guarding the suit property for several years i.e. from the date of issue of the earlier order of compulsory purchase in the year 1993 and the Board continues to be there from that date.

29. The learned Counsel for the Plaintiff submitted that the Plaintiff may be permitted to develop the said

property. The Plaintiff is ready and willing to give an undertaking not to claim any equity and not to create third party interests in respect of the developed property. There is already an order of compulsory purchase in respect of the property. Whether there is a revesting of the property in the Vendors of the Plaintiff is a question which will have to be finally decided at the time of hearing of the suit. As observed earlier, prima-facie, it is very difficult to accept the case of the Plaintiff that the predecessors of the Plaintiff were in possession and that they have handed over the possession of the property to the Plaintiff. Under the circumstances the said prayer cannot be acceded to.

30. Considering the aspect of balance of convenience and irreparable loss and considering the fact that there are triable issues involved in the suit, a limited relief deserves to be granted to the Plaintiff till final disposal of the suit. The interim protection will be by way of directing both the parties to maintain status-quo as of today till final disposal of the suit.

31. It will have to be clarified that the security guards employed by the Defendants will continue to guard the property till final disposal of the suit. The Defendants will not dispossess any person, if any, in

possession of the property and will not take any further steps for sale of the property.

32. Hence the Notice of Motion is disposed of by the following order:

i) Till final disposal of the suit, the parties will maintain status-quo as of today in respect of the suit property. It is made clear that the security guards employed by the 1st Defendant and the board displayed by the Defendants will continue to be on the property. The Defendants will not dispossess any person, if any, found in possession of the suit property as of today and will not take any further steps for sale or auction of the suit property.

ii) Hearing of the suit is expedited.

iii) Certified copy is expedited.

Judge.